

Claudine Osgood
5771 Mission Center Road #104
San Diego, CA 92108
626-641-5656

Anton Ewing
3077 B Clairemont Drive #372
San Diego, CA 92117
619-719-9640

Plaintiffs In Pro Per

FEDERAL DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CLAUDINE OSGOOD, an individual

ANTON EWING, an individual

Plaintiff,

vs.

Main Streat Marketing, LLC, a Utah
limited liability company;
Jerrod Robker, an individual aka Jerrod
McAllister;
DOES 1-100;
ABC CORPORATIONS 1-100;
XYZ, LLC's 1-100.

Defendants

Civil Case No. 16CV2415 GPC BGS

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS
OF CALIFORNIA'S INVASION OF
PRIVACY ACT;
CAL. PENAL CODE SECTION 630,
ET SEQ.;
18 U.S.C. §1964(c) RICO;
47 USC § 227 TCPA**

DEMAND FOR JURY TRIAL

1. Plaintiff Claudine Osgood ("Osgood") and Plaintiff Anton Ewing
("Ewing"), on behalf of themselves individually (in propria persona), allege
against each and every defendant both collectively and separately, as follows

1 against defendants JERROD ROBKER, an individual who is otherwise known as
2 Jerrod McAllister (herein "Robker"), MAIN STREAT MARKETING, LLC, a
3 Utah limited liability company (herein "Main Streat"), DOES 1-100, ABC
4 CORPORATIONS 1-100, and XYZ, LLC's 1-100 (Collectively "Defendants").

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6 2. Defendant Jerrod McAllister sent several false and fraudulent emails to
7 Plaintiff Ewing that stated, in part, the following:

8 "I'm not afraid to go to court with you. My attorneys will chew you up and
9 shit you out like the piece of shit you are..."

10 "you deserve to be beaten"
11 " Fuck yourself "

12 "You're seriously pathetic"
13 "Goodbye, loser."

14 "you're a tool and an ambulance chaser"

15 "dickheads like you..."

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17 3. On September 20, 2016, Defendant's attorney, Yosef Mahmood called
18 Plaintiff Ewing and threatened Ewing with sanctions and attorney fees under CCP
19 §128.7 because Mahmood stated that a cellular phone is a radio and thus not
20 protected from illegal recording under California's Penal Code.
21

22 4. Upon information and belief, Jerrod Robker is Jerrod McAllister and Jerrod
23 McAllister is Jerrod Robker. Wherever the name Robker is contained in this
24 Complaint, it hereby means and is intended to mean McAllister also. Wherever the
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1 word "Defendants" is used herein it means Jerrod Robker, Jerrod McAllister and
2 Main Streat Marketing, LLC, a Utah limited liability company.

3 5. Plaintiffs have never had any prior business relationship with any of the
4 Defendants. Plaintiff Osgood's cellular telephone number 626-641-5656 is a
5 private personal cellular telephone number. Plaintiff Ewing's cellular telephone
6 number 619-719-9640 is a private cellular telephone number. Defendants used an
7 automatic telephone dialing system ("ATDS") as defined by Title 47 and the
8 Federal Communications Commission to robo-dial (or automatically dial) with a
9 prerecorded message to call and record Plaintiffs' cell phone, for telemarketing
10 purposes. Each Plaintiff's cell phone number is registered on the National Do Not
11 Call Registry ("DNC").

12 6. This Complaint is written by unrepresented pro se plaintiffs who are not
13 members of the bar and is to be given wide latitude as such. *Hebbe v. Pliler*, 611
14 F.3d 1202 (2010) "Pro se documents are to be liberally construed" and "must be
15 held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Estelle*
16 *v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) The *Estelle*
17 case has been upheld 8680 times and never overruled or questioned. *Estelle* has
18 also been cited over 34,000 times.

19 7. In *Clark v. Bibb County Board of Education*, 174 F.Supp.2d 1369 (M.D.Ga.
20 2001), the court succinctly stated: because plaintiff is representing himself in this
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1 case, the Court must observe that pro se litigants are entitled to wide latitude when
2 construing their pleadings and papers. See *SEC v. Elliott*, 953 F.2d 1560, 1582
3 (11th Cir.1992). One court has articulated the underlying policy rationale for this
4 rule as follows: "Implicit in the right to self-representation is an obligation on the
5 part of the court to make reasonable allowances to protect pro se litigants from
6 inadvertent forfeiture of important rights because of their lack of legal training."
7 *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983). See also, *Middleton v. City of*
8 *Lakeland*, 830 F.Supp. 1449, 1451 (M.D.Fla. 1993) ("The Court must read
9 Plaintiffs *pro se* allegations liberally, holding them to a less stringent standard than
10 those drafted by an attorney.") See *In re O'Malley*, 252 B.R. 451, 456-457 (N.D.
11 Ill. 1999) (though a judge is not to become an advocate for a *pro se* litigant, the
12 court does have a duty to "take appropriate measures that will permit the
13 adjudication of *pro se* claims on the merits, rather than to order their dismissal on
14 technical grounds.") (internal citations omitted); *In re Barrows*, 171 B.R. 455, 459
15 (D. N.H. 1994) (*pro se* parties' pleading is entitled to a more lenient construction
16 than might otherwise be required in litigation in which both parties are represented
17 by counsel)

22 8. The U.S. Supreme Court has made clear that a *pro se* complaint is held to
23 "less stringent standards than those pleadings drafted by lawyers." *Haines v.*
24 *Kerner*, 404 U.S. 519, 520 (1972); see also *Brown v. Califano*, 75 F.R.D. 499
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(D.D.C. 1977). The equitable reasons for affording *pro se* plaintiffs wide latitude in constructing their pleadings are simple and obvious.

9. As one judge has explained, *pro se* litigants often "are ignorant of the niceties of state and federal practice, and lack the contacts with the legal profession that the more well-to-do and assured of our society rely on to prevent having claims barred by statute of limitations." *Stewart v. United States Postal Service*, 649 F. Supp. 1531, 1535 (S.D.N.Y. 1986) (quoting *Singleton v. City of New York*, 632 F.2d 185, 196 (2d Cir. 1980)

JURISDICTION TO HEAR THIS COMPLAINT IN STATE COURT

10. Plaintiff Claudine Osgood (herein "OSGOOD") and Plaintiff Anton Ewing (herein "EWING") each bring this action for multiple violations of California's Privacy Act and California Penal §630, et seq. by Defendants, and each of them, as hereinafter described. The causes of action are, in large part, state law violations regarding illegal recording, unfair business practices, fraud, trespass to chattels, and spoofing. The causes of action are listed in accordance with California Rule of Court 2.112.

11. Defendants failed to remove this action within 30 days from August 22, 2016 which was the day that all Defendants received the Summons and Complaint from a registered process served through formal service which was effectuated pursuant to CCP §415.40. Additionally, Defendant McAllister was emailed a true and accurate copy of the Summons and Complaint on August 16, 2016.

Standard Applicable to a Preliminary Injunction

12. To demonstrate her entitlement to a preliminary injunction, Plaintiff Osgood must show (a) that she will suffer irreparable harm and (b) either (i) a likelihood of success on the merits or (ii) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in Plaintiffs' favor.

13. This Court has personal and subject matter jurisdiction and venue over state law claims and may hear pendant federal law violations. Any claim or averment by defense counsel that TCPA and/or RICO claims cannot be heard in state court would be frivolous and subject counsel to sanctions by the Court.

14. The Court is requested to enter an order for preliminary injunction to prohibit Defendants from calling or spamming Plaintiffs and to prohibit Defendants from selling their personal confidential information to third parties.

FICTITIOUS DEFENDANTS

15. Does 1-100, ABC Corporations 1-100 and XYZ, LLC's 1-100, are each sued fictitiously because their true names are currently unknown but leave to amend is hereby reserved and amendment will be made to properly name said defendants as soon as discovery allows therefor. All fictitiously named defendants are accused of and responsible for each and every violation and causes of action described herein. Just because the Complaint does not repeat the words "fictitious

1 defendant” over and over again does not in any way remove them from liability or
2 responsibility.

3 **GENERAL ALLEGATIONS & CORPORATE BACKGROUND**

4 16. Plaintiff Claudine Osgood is a U.S. citizen and a resident of the City of San
5 Diego, County of San Diego, State of California. Plaintiff Anton Ewing is a U.S.
6 citizen and a resident of the City of San Diego, County of San Diego, State of
7 California
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9 17. Defendant ROBKER (or McAllister) was doing business in California in
10 May, June, July and August of 2016. ROBKER and Main Streat Marketing, LLC,
11 purposefully directed their activities into California and have knowingly and
12 intentionally availed themselves of the benefits and protections of California law.
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14 18. Main Streat Marketing, LLC is not licensed, in any manner whatsoever, to
15 sell loans in California. Main Streat Marketing, LLC fraudulently stated on each
16 telemarketing call that it was “certified” and “licensed” by Google. In at least one
17 of the illegal calls made by Defendants to Plaintiff Ewing, the call was received by
18 Ewing prior to 8:00 AM Pacific time (California time). It is illegal to make
19 telemarketing calls prior to 8:00 AM in the time zone in which the phone is
20 located.
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22 19. On Defendant’s web page at <http://mainstreatmarketing.com/> it claims that it
23 has three offices in “southern California” when in fact it does not have even one
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1 office and Main Streat Marketing, LLC is not even registered to do business in
2 California with the Secretary of State. According the certified filings with the
3 Utah Secretary of State, Main Streat Marketing, LLC claims that is provide legal
4 services and practices law as "NAICS Title: 5411-Legal Services". See
5 <https://secure.utah.gov/bes/details.html?entity=9587705-0160>
6

7 20. Main Streat Marketing, LLC is a defunct and suspended entity that is not in
8 good standing with the Secretary of State and thus is constitutes a criminal act
9 under California's Revenue and Taxation Code for an attorney to represent said
10 LLC in a court of law. See R&T §19719.
11

12 21. This action arises out of Defendants' violations of California's Invasion of
13 Privacy Act, Cal. Penal Code §630, *et seq.* ("CIPA"), which prohibits the recording
14 of confidential communications without the consent of all parties to the
15 conversation as well as violations of Racketeering Influence and Corrupt
16 Organizations Act, 18 U.S.C. §1964 and the Telephone Consumer Protection Act,
17 47 U.S.C. §227. Additionally, as a pendant claim, Defendants have violated
18 California Public Utility Code section 2873 and 47 USC §227(b)(a)(A) by using an
19 automatic telephone dialing system and automated answering device to call
20
21 Plaintiffs on their private cellphones. Defendants have also violated 47 C.F.R.,
22 §64.1200 and thus harmed Plaintiffs.
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1 22. Upon information and belief and pleading in the alternative, during the
2 period relevant herein and continuing presently, Defendant ROBKER was and
3 continues to be the alter ego of Defendant Main Streat Marketing, LLC.

4 23. Upon information and belief, on August 11, 2016, Defendant ROBKER, or
5 one of its employees, agents or contractors at its direction and control, called
6 Plaintiff Osgood from 626-472-1821 on Plaintiff Osgood's personal cellular
7 telephone at 626-641-5656 for which OSGOOD has expressly informed the public
8 to not make solicitation calls and/or texts via national do-not-call list registration as
9 well as other public warnings.
10

11 24. Additionally, Osgood informed Defendant Robker that her phone was on the
12 do not call registry and asked for a copy of the internal do not call policy; however,
13 Main Streat Marketing, LLC continues to illegally call Osgood and Ewing over
14 and over again to telemarket Main Streat Marketing, LLC's scam business
15 program.
16

17 25. Plaintiff's hereby allege that a personal cellular phone is not even required to
18 be listed on the National Do Not Call list in order to receive protection from spam
19 telemarketers. Main Streat Marketing, LLC is not licensed to do business in
20 California. Main Street is currently violating California tax laws and is criminally
21 evading California taxes.
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1 26. Each Defendant has also failed to register as a telemarketer with the
2 California Attorney General pursuant to California Business & Professions Code
3 §17511 et seq. and has also failed to pay the \$50 application fee, to file the Form A
4 and to post the required \$100,000 bond. This failure to act is a criminal act under
5 B&P 17511.9 to fail to registered as indicated above.
6

7 27. During the period relevant herein, ROBKER and Main Streat Defendants,
8 including Robker's agents, were a provider of information technology and
9 centralized operational and back-end support services to the ROBKER, and all of
10 its subsidiaries. As such, ROBKER, including Main Streat Marketing, LLC,
11 provided the infrastructure for dialing and recording the call and/or text at issue in
12 this litigation. ROBKER used automated telephone dialing systems and recording
13 devices at the direction of Main Streat Marketing, LLC, and its relevant
14 subsidiaries.
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17 28. ROBKER also managed the call and/or text centers and telephony
18 architecture and telephone recordings for the enterprise, and its subsidiaries,
19 including Defendant ROBKER and Main Streat Marketing, LLC. ROBKER
20 continues to manage call and/or text centers and recordings on behalf of the
21 racketeering enterprise business. Defendant ROBKER is technologically
22 sophisticated and Defendant ROBKER employs this high level of knowledge and
23 know-how to run his criminal syndicate.
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1 29. In *Gomez vs. Campbell-Ewald Co.*, 768 F.3d 871; 2014 U.S. App. LEXIS
2 18019; 61 Comm. Reg. (P & F) 363, the 9th Circuit held that all the actors in the
3 telemarketing chain are vicariously liable for the acts of eachother. The 9th Circuit
4 also expressly held that there is in fact standing under Article III to sue under the
5 TCPA. The US Supreme Court upheld this holding on January 20, 2016. Each
6 Defendant named herein, including the fictitiously named defendants, is
7 vicariously liable for the acts of its agents and for eachother's acts.
8

9 30. Moreover, ROBKER continues to monitor and record telephone calls to
10 California residents, including each Plaintiff.
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12 31. During the relevant period herein, thousands of telephone calls with
13 individuals in California were recorded by ROBKER's telephone systems at the
14 direction of each of the other Defendants.
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16 JURISDICTION OVER ALL CLAIMS AND ALL PARTIES

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18 32. Jurisdiction is proper in the Superior Court because Plaintiffs are residents of
19 San Diego, California. The Superior Court of California has concurrent
20 jurisdiction over all TCPA and RICO claims.
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22 VENUE

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1 33. Venue is proper in San Diego County because Plaintiffs reside in this
2 District and a substantial part of the events giving rise to Plaintiffs' claims
3 occurred in San Diego County. Each of the Defendants has sufficient minimum
4 contacts with San Diego County and the State of California, and otherwise
5 purposely avail themselves of the markets in this state and San Diego County.
6 Defendants knowingly and intentionally called area code 619 and 626 which they
7 had reason to know are solely and strictly within California.
8

9 **PARTIES**

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12 34. Plaintiff CLAUDINE OSGOOD and ANTON EWING are residents of San
13 Diego County, California whose confidential telephone communications were
14 unlawfully recorded by ROBKER Defendants during the period relevant herein.
15 Plaintiff OSGOOD had placed her telephone number for her cellular phone on the
16 Do Not Call registry more than 31 days prior to the offending calls.
17

18 35. In August, 2016, Plaintiff OSGOOD was knowingly and intentionally called
19 multiple times by ROBKER Defendants, or its agents, based on a telephone list
20 obtained by ROBKER. An employee named Machayla made multiple calls to
21 Plaintiff Osgood and he or she (Machayla) is an employee of Defendants.
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23 36. A Main Street Marketing, LLC employee by the name of Kim Swanson and
24 Cory Williams called Plaintiff Ewing. Plaintiff Ewing was called over and over
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1 again by Defendants even after Ewing demanded that they stop calling. Main
2 Streat Marketing, LLC ignored litigation threats (CCP §47b) and Plaintiff's
3 demands to cease and desist.

4 37. Devoy and Cory Williams confessed that Main Streat Marketing, LLC uses
5 and employs a third party company in India to originate its telemarketing calls.
6 Main Streat Marketing, LLC employs a third party company in India in order to
7 knowingly and intentional evade United States federal and California criminal laws
8 that prohibit telemarketing (47 USC §501) and illegal recording (Penal Code
9 §632).
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12 38. Main Streat Marketing, LLC and Robker are engaged in a conspiracy to
13 violate federal and state criminal laws prohibiting unlawful telemarketing and
14 unlawful recording, through the use of the wires of the United States. Cory
15 Williams admitted that Main Streat Marketing, LLC records calls and does not
16 provide any advance warning thereof. Upon information and belief formed after
17 reasonable and diligent research, Robker is a felon and convicted child molester
18 according to public records.
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21 **Defendants**

22 39. Defendant JERROD ROBKER is located in Utah.
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1 40. Plaintiff is informed and believes, and therefore alleges, that Defendant
2 ROBKER owned the call centers that were used to make the non-consensual
3 recordings of confidential communications that are at the core of this matter.

4 41. Plaintiff is informed and believes, and therefore alleges, ROBKER himself,
5 also supervised and conducted the internal affairs and daily business operations of
6 Defendant Main Streat Marketing, LLC in such a way as to treat all of its
7 subsidiaries, including ROBKER as their alter ego, by engaging in conduct, acts or
8 omissions including controlling ROBKER to such a degree as to render Main
9 Street a mere instrumentality of Defendant ROBKER. This allegation is pleas in
10 the alternative.
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12 42. Plaintiff is informed and believes, and therefore alleges, Defendant
13 ROBKER, its agents and employees constitute a racketeering enterprise through
14 Main Streat Marketing, LLC. Said enterprise used and employed the wires of the
15 United State of America to engage in serious fraudulent and criminal activity by
16 robo-dialing or ATDS calling to Plaintiff Osgood and Plaintiff Ewing's California
17 cellular telephones. These calls crossed state lines and thus constitute the predicate
18 act of wire fraud in that Defendants, including Robker, and Main Streat Marketing,
19 LLC, used the telephone infrastructure of the United States to commit their
20 interstate criminal activities that were continuous and ongoing for several years,
21 including 2015 and 2016. Defendant ROBKER is in the business of illegally
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1 buying and selling lists of names of persons on the National Do Not Call list so
 2 that those persons get and receive calls from spammers and telemarketers.

3 Defendant ROBKER knows that all of the calls made are recorded without
 4 permission or proper disclosure of the recording.

5
 6 43. Jerrod McAllister also uses a BBB F rated company called Local
 7 Verifications, LLC to engage in his illegal telemarketing and other racketeering
 8 activities.

9
 10 44. A simple Google search of Jerrod Robker on the Utah secretary of state
 11 shows that he is the agent for service of Main Streat Markting, LLC and he is from
 12 Cedar City according to the Secretary of State. Further:

13 <http://www.utahsright.com/chargesprofile.php?id=1072372>

14 Jerrod Grant Robker

15 Date: 1998-02-20

16 Court: Cedar City District

17 Details:

18 Case: 981500143

19 Violation Code: 76-5-404.1

20 Violation: SEXUAL ABUSE OF A CHILD

21 Judgement: **{Guilty Plea}**

22 Plaintiff: STATE OF UTAH

23 Plaintiff Attorney:

24 Other Charges:*

25 Case: 981500143

Date: 1998-02-20

Violation: LEWDNESS INVOLVING A CHILD

Case: 101500667

Date: 2010-11-01

Violation: ATTEMPTED ASSAULT BY PRISONER

Case: 101500667

1 Date: 2010-11-01

2 Violation: INTERFERENCE WITH ARRESTING OFFICER

3 45. Plaintiff Osgood and Plaintiff Ewing are informed and believe, and therefore
4 allege, that defendant ROBKER's comprehensive right to control is sufficient to
5 meet the agency standard under California law.

6 46. Plaintiff Osgood and Plaintiff Ewing are informed and believe, and therefore
7 allege, during the relevant period described herein, Defendants, and each of them,
8 each aided and abetted, encouraged and rendered substantial assistance to each
9 other in furthering the CIPA and RICO violations. In addition to acting on their
10 own behalf individually, Defendants, and each of them, are and were acting as the
11 agent, alter ego, servant, employee, joint venturer, and representative of, and with
12 the knowledge, consent and permission of, and in concert with the other
13 defendants. The actions of the defendants as described in this complaint all fall
14 within the course, scope, and authority of the agency, service, and employment
15 relationships that exist between the defendants, and as such, create joint ventures
16 between all of the defendants to the extent that binding legal relationships do not
17 already exist.

18 47. The actions and representations of Defendants constitute a conspiracy on the
19 part of Defendants, including Robker and Main Street Marketing, LLC, for the
20 purpose of such actions and representations made to the Plaintiffs of this cause of
21 action. ROBKER illegally and unlawfully engaged in the conduct of an enterprise
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1 through a pattern of racketeering activity. Said conduct occurred over an extended
2 period of time so as to form a pattern as defined under Title 18. The enterprise
3 consisted of Defendants ROBKER, Main Streat Marketing, LLC and each
4 fictitiously named defendant.

5
6 48. The enterprise was controlled, operated, directed and managed by Defendant
7 Main Streat Marketing, LLC, Defendant Robker and other persons that are yet to
8 be determined and remain unknown as of the time of filing this Complaint.

9 Defendant Main Streat is engaging in organized crime with its co-conspirator
10 Jerrod Robker.
11

12 49. Wire Fraud under 18 USC §1343 is present in this case with these named
13 defendants when Defendant ROBKER and Defendants Main Streat Marketing,
14 LLC, having devised or intending to devise a scheme or artifice to defraud, that is,
15 their criminal robo-dialing and illegal telemarketing (47 USC §501), or for
16 obtaining money or property by means of false or fraudulent pretenses,
17 representations, or promises, transmitted or caused to be transmitted by means of
18 wire, radio, or television communication in interstate or foreign commerce, any
19 writings, signs, signals, pictures, or sounds for the purpose of executing such
20 scheme or artifice. In this case Defendant ROBKER called Plaintiffs personally
21 and caused Plaintiffs to be texted and recorded in violation of California's criminal
22 law. Defendant ROBKER's call constituted a scheme and artifice to defraud
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1 Plaintiffs and to obtain money and property from Plaintiffs. Defendant ROBKER
 2 attempted to get Plaintiffs to send him money. The calls were transmitted by
 3 means of wires in interstate commerce through the telephone and internet lines of
 4 the United States. Defendant ROBKER made telephone calls to Plaintiffs to
 5 engage in wire fraud and to commit the criminal acts expressly stated herein,
 6 including criminal acts of recording calls and criminal acts of ATDS robo dialing
 7 of cell phones owned by Plaintiffs. For purposes of the particularity requirement,
 8 Defendant ROBKER or his agent called on August 11, 2016 at 11:37 AM and
 9 multiple other times.
 10
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12 50. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
 13 case regarding calls to a non-debtor similar to this one:

14 The Telephone Consumer Protection Act...is well known for
 15 It's provisions limiting junk-fax transmissions. A less-litigated
 16 part of the Act curtails the use of automated dialers and
 17 prerecorded messages to cell phones, whose subscribers often
 18 Are billed by the minute as soon as the call is answered--and
 19 Routing a call to voicemail counts as answering the call. An
 20 Automated call to a landline phone can be an annoyance; an
 Automated call to a cell phone adds expense to annoyance.
Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

21 51. Defendants knowingly and willfully violated the automated-call
 22 requirements under 47 U.S.C. §227(b)(3) and willfully and knowingly violated the
 23 do-not-call-list requirements under 47 U.S.C. §227(c)(5). *Charvat v. NMP, LLC*
 24 (2001, CA6 Ohio) 656 F.3d 440 holds that Plaintiffs may recover both \$1500
 25

1 statutory damages awards even if both violations occurred in the same telephone
2 call.

3 **FACTUAL ALLEGATIONS REGARDING CONFIDENTIAL**
4 **TELEPHONIC COMMUNICATIONS WITH PLAINTIFFS**
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7 52. In August, 2016, plaintiff OSGOOD was called multiple times by ROBKER
8 and his co-Defendants. ROBKER and his co-Defendants engaged Plaintiff
9 OSGOOD in confidential telephone communications. To the best of Plaintiff
10 OSGOOD's recollection, she spoke to ROBKER Defendants' personnel several
11 times, including employee Macheyla, in addition to being called by the ROBKER
12 and/or ROBKER robotic Echo system.
13

14 53. On any of the occasions when she spoke telephonically with ROBKER
15 Defendants' personnel, Plaintiff OSGOOD and Plaintiff Ewing were not advised
16 at the outset of the calls that the calls might be recorded by ROBKER Defendants.
17 In light of the sensitive nature of the personal and confidential information being
18 discussed during the telephone calls, Plaintiff OSGOOD and Plaintiff Ewing had
19 an objectively reasonable expectation of privacy – in that they reasonably expected
20 that the conversations were not being overheard, monitored and/or recorded.
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22 54. Defendant ROBKER refused to provide Plaintiffs with a written copy of its
23 do not call policy and refused to take Plaintiff Ewing or Osgood's name and
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1 number off the telemarketing list. Robker used an ATDS telephone dialing system
2 to automatically dial Plaintiff Ewing's and Plaintiff Osgood's phone number and
3 sell business loans. Robker has failed to train his personnel, agents and employees
4 on the Telephone Sales Rule promulgated by the FTC.

5 **DEFENDANTS' IMPROPER AND ILLEGAL**

6 **RECORDING POLICIES AND PRACTICES**

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8 55. Defendants' policies and practices, during the period relevant herein and
9 continuing to the present, were to record confidential telephonic communications
10 with California individuals, without advising them at the outset of each telephone
11 call that it is being recorded, in violation of California Penal Code §630, *et seq.*

12
13 56. ROBKER and all other Defendants did not obtain consent to record any of
14 the telephone conversations prior to the time they recorded the calls. Main Street
15 Marketing, LLC has admitted that it records its telemarketing calls and that its
16 third party agents from India and elsewhere record telemarketing calls without
17 warnings.
18

19
20 57. ROBKER designed and implemented an extensive call center system for the
21 thousands of consumer transactions serviced by its various affiliates and
22 subsidiaries. During the times relevant to the CIPA claims made herein, the
23 system included 3 domestic and international call centers from which customer
24 calls are placed and received on behalf of ROBKER business units.
25

1 58. ROBKER and Main Streat Marketing, LLC operate, implement and manage
2 the architecture and infrastructure necessary to meet the call recording strategies
3 set by ROBKER and all Defendants. At the direction of the relevant business unit
4 subsidiary of ROBKER Racketeering infrastructure dialed telephone numbers to
5 California individuals and recorded the telephone calls. The volume of calls and
6 texts was extraordinary. At each call center, defendant ROBKER, including Main
7 Streat Marketing, LLC, used databases and servers to store and retrieve the
8 recordings.
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11 59. ROBKER and Main Streat Marketing, LLC continue to maintain call centers
12 and oversee recordings in connection with ROBKER's line of business. Plaintiff
13 Osgood and Plaintiff Ewing will seek, demand and argue for punitive damages at
14 trial herein to send a message to Defendants and others similarly situated that
15 violation of California's criminal and federal stalking, terrorism and harassment
16 laws are not allowed. Defendants also violated California Penal Code §653m by
17 repeatedly and in a seriously annoying manner, calling each Plaintiff over and over
18 again. No permission or subsequent permission to call was ever given or granted
19 in any manner whatsoever by either Plaintiff for Main Streat Marketing, LLC or
20 any other defendant or fictitious defendant to call either of Plaintiff's cell phones.
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23 60. The central automated telephone dialing system ("ATDS") was, and
24 currently continues to be, used by Defendants to initiate up to two thousand calls a
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1 day. The ATDS is used by all the subsidiaries of ROBKER RACKETEERS.

2 Approximately 10% or 1,000 of these calls were made to California consumers.

3 Defendants' policy and practice was to set the ATDS to call the consumer's home,

4 business, and cellular telephones up to five times a day. Depending on the

5 instructions given by each business unit, 15%-20% of all of the telephone calls (at

6 times up to 100% of the calls in certain businesses) were set to record by ROBKER

7 and recorded, using a centralized call recording hardware and software. Recording

8 began when the customer was connected with a call center agent.

9
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11 61. Defendants together strategically managed the ATDS to maximize

12 resources, i.e., by employing a consistent process across the businesses for

13 determining how and when calls would be made through the ATDS and scoring or

14 rating the calls for advance treatment through the ATDS.

15
16 62. ROBKER's businesses directly loaded customer information onto

17 ROBKER's "mainframe" or "back-end" computer system, which includes the

18 ATDS. During the day, accounts would be loaded into dialer tables, and the tables

19 would then be run through the dialer. Once the ATDS would initiate the call, and a

20 customer would answer, ROBKER's "automated call distributor" would then route

21 the call to an available agent. Defendants called Plaintiff OSGOOD at 626-641-

22 5656, her personal cellular telephone. Plaintiff OSGOOD was physically present

23 in California during each and every illegally recorded telephone conversation

1 alleged herein. At the same time the call was routed, the agent received the
2 customer's information on a computer screen. If a recording of the telephone
3 communications was going to be made by the recording system, the recording
4 would begin when the Defendants' agent picked up the call. The agents do not
5 have the ability to stop or start call recording. The agents do not know which calls
6 are being recorded and have admitted that all calls are recorded. An employee of
7 ROBKER stated that all calls are recorded and there is no warning or disclosure of
8 such recording to the consumer during the entire call.
9
10

11 63. With respect to whether the telephone agents themselves provide the call
12 recipients with a verbal advisement that the call may be recorded, Defendants
13 admit to a policy whereby the agents *do not provide any advisement* to customers
14 that the calls are being recorded.
15

16 64. For calls related to ROBKER'S business, Defendants are required, pursuant
17 to California Penal Code §630 et seq., to give a verbal advisory that the call is
18 being recorded before speaking to a customer. Defendants have previously
19 admitted that based on an evaluation of a sample set of recordings, a verbal
20 advisory was not given.
21

22 65. CIPA prohibits the recording of communications without first obtaining the
23 consent of all parties to the conversation. Cal. Penal Code §632. PC Section 632.7
24 does not require that a communication be confidential in order to be provided
25

1 protection from interception or recording. The call and/or text of the section
2 notably contains no reference to “confidential communications;” moreover, more
3 than just confidential communications are protected. ALL communications that are
4 recorded without the consent of both parties to the communication are protected.
5

6 66. The right protected by Section 632 is not against the betrayal of a party’s
7 confidence by the other party. Rather, Section 632 protects against simultaneous
8 dissemination to an unannounced second auditor without the party’s consent. Any
9 communication, regardless of the intimacy of the facts discussed, that is recorded
10 devoid of notice of recordation, is a violation of California law.
11

12 67. Under California law, the term “confidential communication” includes any
13 communication carried on in circumstances that may reasonably indicate that any
14 party to the communication desires it to be confined to the parties thereto. Cal. Pen.
15 Code §632(c). In other words, a communication is confidential “if a party to that
16 conversation has an objectively reasonable expectation that the conversation is not
17 being overheard.”
18

19 68. In light of the sensitive nature of the personal financial and related
20 information being discussed in the calls with Defendants, Plaintiffs had an
21 objectively reasonable expectation of privacy – in that OSGOOD and Ewing
22 reasonably expected that the conversations were not being overheard, monitored
23 and/or recorded.
24
25

69. The absence of any such advisement would lead a California consumer to reasonably anticipate that his/her telephone call was not being recorded.

70. In violation of the CIPA, Defendants recorded Plaintiffs' telephone calls without OSGOOD or Ewing's express consent. The exhibits attached to this complaint show in detail the exact numbers that Defendants used to call Plaintiffs.

71. Defendants have engaged in a pattern and practice of recording a substantial percentage of the telephonic communications with individuals located in California.

72. Defendants intentionally, and without the consent of all parties, by means of an electronic recording device, recorded confidential telephonic communications with Plaintiff OSGOOD and Plaintiff Ewing.

73. The complaint here is timely filed. The applicable statute of limitations for violations of the CIPA is one year (Cal. Civ. Proc. Code §340(a)).

74. This Complaint is thus timely filed and Defendants have been on timely notice. Plaintiffs have tried diligently to resolve this matter before filing.

CAUSES OF ACTION

First Cause of Action

I.

(For Statutory Damages and Injunctive Relief for Violations of Cal. Penal Code Sections 632 and 637.2(a)-(b))

1 (as to Defendant McAllister, Defendant Main Street Marketing, LLC and
2 all fictitiously named defendants)

3 75. Plaintiffs incorporate by reference all of the above paragraphs of this
4 Complaint as though fully stated herein.
5

6 76. At all times relevant herein, Defendants, including Robker and Main Street
7 Marketing, LLC routinely communicated by telephone with Plaintiffs in
8 connection with attempts to sell products of Defendants.
9

10 77. At all times relevant herein, Defendants made use of a software system that
11 enabled them to secretly record confidential telephone conversations between
12 Plaintiffs on the one hand, and Defendants on the other hand.

13 78. In each of the conversations with Defendants, Plaintiffs discussed their
14 confidential personal financial circumstances and affairs, on each account. It was
15 reasonable for the Plaintiffs to expect that the conversations would be confined to
16 the parties to the conversation, and that their conversations were not being
17 overheard or recorded.
18

19 79. Upon information and belief, each of the conversations between Defendants
20 and OSGOOD, and Defendants and Ewing, was a “confidential communication”
21 within the meaning of California Penal Code section 632(c).
22

23 80. California Penal Code section 632 *et seq* prohibits a party from recording
24 such conversations without first informing all parties to the conversation that the
25

1 conversation is being recorded. Defendants' confidential telephone
2 communications with Plaintiffs were secretly and surreptitiously recorded by
3 Defendants without obtaining consent to record such conversations.

4 81. Defendants' practice of recording telephone conversations with Plaintiff
5 violated California Penal Code section 632(a).
6

7 82. Pursuant to California Penal Code §637.2(a)(1), Plaintiffs are entitled to
8 recover statutory damages in the amount of \$5,000 per violation. Plaintiffs'
9 counsel is also entitled to attorneys' fees and costs pursuant to Cal. Civ. Proc. Code
10 §1021.5. Plaintiffs consulted with several California licensed attorneys and paid
11 for said legal advice to enable them to bring this suit.
12

13 83. Pursuant to California Penal Code §637.2(b), Plaintiffs also seeks a
14 preliminary and permanent injunction to restrain Defendants from committing
15 further violations of CIPA and to prohibit and prevent Defendants from making
16 future extortionate threats to Plaintiff Ewing and his family.
17

18 84. Pursuant to California Penal Code §637, Defendants have willfully disclosed
19 the contents of Plaintiff's telephonic communications to a third party without
20 OSGOOD or Ewing's consent.
21

22 **RICO CONSPIRACY 18 U.S.C. §1964(c)**

23 **Second Cause of Action**

24 **II.**

**(as to Defendant McAllister, Defendant Main Streat Marketing, LLC and
all fictitiously named defendants)**

85. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

86. Upon information and belief, Defendants, and each of them, have engaged in the predicate acts of wire fraud and money laundering which supports the claim of violation of 18 U.S.C. §1962(d) and (c), conspiracy to conduct racketeering affairs through a pattern of racketeering activity.

87. In the alternative, the enterprise is the combination of the entities named herein as defendants. Upon information and belief, specifically, ROBKER and Main Streat Marketing, LLC together is the enterprise. The period of the conspiracy has lasted from at least May 2014 forward to present day. Upon information and belief, the conspiracy began in 2009 when Defendant Robker created the enterprise. There are two or more acts that form the basis of racketeering engaged in by Defendants by using the wires of the United States to illegally record Plaintiff Ewing and Plaintiff Osgood's telephonic conversations and laundering over \$10,000 of the proceeds of the wire fraud through financial institutions, including Bank of America, Chase Bank and Wells Fargo Bank. Defendants, including Robker and Main Streat Marketing, LLC, are also engaging in voluminous spam calling in direct violation of 47 U.S.C. §227 to solicit

1 confidential information over the wires of the United States, which is made
2 criminal under 47 USC §501. Defendant ROBKER is associated with and a
3 member of the enterprise as alleged and described above by Plaintiffs. Defendant
4 ROBKER knowingly committed at least two of the predicate acts herein described,
5 including extortion, illegal recording and illegal robo-dialing with an ATDS in
6 2016.
7

8 88. The predicate acts formed a pattern of racketeering activity by having the
9 same or similar purposes, results, participants, victims, or methods of commission,
10 or were otherwise interrelated by distinguishing characteristics so that they were
11 not isolated events. The enterprise was engaged in, or its activities affected,
12 interstate commerce.
13

14 89. The use of the wires and the laundering of money through financial
15 institutions affects interstate commerce. ROBKER illegally used the wires of the
16 United States by illegally (in violation of 47 U.S.C. §501 – a crime) calling and
17 texting Plaintiffs in order to further enrich themselves. ROBKER's act as
18 described herein constitute wire fraud and said wire fraud is one of the multiple
19 predicate acts that support this cause of action for conspiracy to commit
20 racketeering activity in violation of 18 USS §§1961, 1962 and 1964.
21

22 90. Plaintiffs have been injured in their business and property as a direct and
23 proximate cause of Defendants, and each of them, willful violations of California
24
25

1 law as described above, which is the pattern of racketeering activity. The financial
2 harm to each Plaintiff's property has been substantial and will be proven with
3 exactness at trial herein.

4 91. Both federal and state law provide for express and explicit damages which
5 constitute the concrete injury to business or property required for RICO actions.

6 Additionally, those same statutes also provide for mandatory triple damages.

7 Plaintiff Ewing and Plaintiff Osgood's businesses have suffered a significant
8 economic downturn as a direct and proximate cause of ROBKER's racketeering
9 activities as described herein.
10

11 92. Plaintiffs have lost money and revenues that could have been earned but for
12 ROBKER's racketeering activity. Defendants did not act by mistake or accident
13 but rather acted voluntarily. Each and every fraudulent telephone conversation that
14 forms the basis of this cause of action constituted an illegal use of the wires in
15 violation of 18 U.S.C §1343.
16

17 93. Plaintiffs demand threefold damages as well as statutorily imposed attorney
18 fees as a result of Defendant's racketeering activities described above. Plaintiffs
19 have had to consult with a licensed attorney at law to prosecute this action and
20 those attorney fees are requested to be paid or reimbursed.
21

22 94. Defendant's actions did not result in nor were caused by the purchase of or
23 sale of securities.
24
25

1 95. Defendant's use of the wires (18 U.S.C. 1343) within the United States went
2 across state lines and thus constitutes the interstate commerce of the racketeering
3 enterprise of Defendants.

4 96. Upon information and belief, Defendants committed two or more acts of
5 racketeering activity within the ten years prior to filing this cause of action.

6 Robker has conspired with his co-defendants to violate 18 USC §1962 and §1961
7 as well as 47 USC §227.

8 97. In addition, Defendant's pattern of racketeering activities is the constant and
9 multiple recording of thousands of telephone calls illegally over an extended
10 period of time as described above as well as a knowing and intentional violation of
11 the Do Not Call registry.

12 98. Each Defendant named herein engaged, directly or indirectly, in the pattern
13 of racketeering affairs and activities described above.

14 99. Defendants laundered their profits, revenues, expenses and income from
15 their racketeering activities as defined by 18 U.S.C. 1961(1), through US financial
16 institutions in violation of 18 U.S.C. §§1956 and 1957. Defendant ROBKER has
17 earned, illegally, over \$10,000 in this racketeering enterprise operation and
18 Defendant ROBKER has laundered those said funds through financial institutions
19 in the United States.
20
21
22
23
24
25

1 100. The Defendants specified unlawful activity for purposes of 18 U.S.C.
2 §1956(c)(7), is 18 U.S.C. §1343 as defined in 18 U.S.C. §1961(1). Main Street
3 Marketing, LLC is a money laundering organization at its very core and it even
4 brags about this fact on its web page as www.MainStreetMarketing.com.
5

6 **VIOLATION OF 47 U.S.C. §227 DO NOT CALL REGISTRY**

7 **Third Cause of Action**

8 **III.**

9 **(as to Defendant McAllister, Defendant Main Street Marketing, LLC and**
10 **all fictitiously named defendants)**
11

12 101. Plaintiffs incorporate by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.
14

15 102. 47 C.F.R. 64.1200(c)(2) prohibits calling any number on the national Do Not
16 Call Registry. 47 C.F.R. 64.1200(a)(1)(iii) states that no person or entity may
17 initiate any commercial purpose telephone call to any cellular telephone that is
18 already on the national do-not-call registry.
19

20 103. Plaintiffs and Defendants do not and did not ever have any pre-existing or
21 established business relationship at any time. Defendants are not a tax-exempt
22 nonprofit organization or a political organization. Defendants were not calling
23 Plaintiffs to take a poll or count votes.
24
25

1 104. Upon information and belief formed after reasonable and diligent research,
2 Defendants do not have a do not call database. Defendants refused to identify
3 themselves upon request by Plaintiffs. Defendants refused to put Plaintiffs on
4 their do not call list even after demanding the same in writing which was replied to
5 by Robker himself. Defendants used and employed an automated dialer to call
6 Plaintiffs which is made unlawful under 47 USC §227.

8 105. Defendants do not have a do not call policy that is written.

9 106. Defendants refused to provide Plaintiffs with a written copy of any do not
10 call policy.
11

12 107. Defendants do not scrub their call lists against the national do not call list or
13 registry.
14

15 108. Defendants do not have any personal relationship with Plaintiffs.

16 109. Defendants refused to provide the full name of the caller on the telephone
17 who initiated the call.

18 110. Defendants refused to provide a telephone number or address at which the
19 Defendants could be contacted.
20

21 111. Defendants knowingly and willfully violated the automated-call
22 requirements under 47 U.S.C. §227(b)(3) and willfully and knowingly violated the
23 do-not-call-list requirements under 47 U.S.C. §227(c)(5). *Charvat v. NMP, LLC*
24 (2001, CA6 Ohio) 656 F.3d 440 holds that Plaintiffs may recover both \$1500
25

1 statutory damages awards even if both violations occurred in the same telephone
2 call.

3 112. Defendants engaged in unsolicited advertising through the use of wires in
4 the United States and did not have written permission to use a pre-recorded voice
5 message.
6

7 113. On May 4, 2016 Jerrod McAllister aka Jerrod Robert wrote as email from
8 jerrod@mainstreetmarketing.com to Plaintiff Ewing that stated “chew [me] up and
9 shit down [my] throat like the peace of shit [I am]” followed by “[I] deserve to be
10 beaten” and then ended the email with “Fuck yourself.”
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs requests that the Court enter judgment against
14 Defendants as follows:
15

16 A. For statutory damages in the amount of \$5,000 per violation
17 pursuant to California Penal Code §637.2(a)(1) or, if greater, three times actual
18 damages as provided in California Penal Code §637.2(a)(2); \$500 plus threefold
19 damages for intentional violation of the Do Not Call registry for each and every
20 call, failure to maintain an do not call list, and failure to provide a written copy of
21 do not call policy.
22

23 B. For punitive damages in an amount to be determined with exactness at
24 trial herein;
25

1 C. For threefold damages pursuant to 18 U.S.C. §1964(c);

2 D. For a preliminary and permanent injunction to restrain further
3 violations of the CIPA, pursuant to California Penal Code §637.2(b);

4 E. For the payment of reasonable attorneys' fees and costs of suit
5 incurred herein under all applicable statutes and rules including under Cal. Civ.
6 Proc. Code §1021.5 and 18 U.S.C. §1964;

8 F. For pre- and post-judgment interest at the legal rate; and

9 G. For any other relief that the Court deems just and proper.

10 H. For costs of service of process.

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff is entitled to and demands a trial by jury for all claims so triable.

14 **VERIFIED COMPLAINT:** The statements, declarations, averments and
15 assertions made herein are hereby verified as true, complete, and accurate under
16 penalty of perjury under the laws of the State of California.

17
18 Dated this 4th day of October, 2016

19
20 

21 Claudine Osgood,
22 Plaintiff in pro per

23 /s/ Anton Ewing

24 Anton Ewing,
25 Plaintiff in pro per

DECLARATION IN SUPPORT OF FIRST AMENDED COMPLAINT

I, Anton Ewing, hereby depose, declare and state the following as true and correct under penalty of perjury under the laws of the State of California:

1. I was called multiple times by Defendants herein and said calls were recorded without my knowledge or consent on or about May 3, 2016 and at other times. There was no warning at the beginning of the calls.
2. My cellular telephone was registered with the national Do Not Call list more than 31 days prior to any and all calls made to my phone.
3. I was called by a Defendants using a pre-recorded voice robo-dialer.
4. I received multiple emails from Jerrod McAllister, one in which he told me to "Fuck [my]self" and in another he called me a "dickhead."
5. I have never given Defendants consent or permission to use an ATDS to call my phone.

I am competent to testify to the above stated factual assertions.

Dated this 4th day of October, 2016

/s/ Anton Ewing
Anton Ewing
Plaintiff in pro per